FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR
SECOND APPEAL NO. 88 OF 2007

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

CORAM : Smt. V. A. Naik, J.
DATE : 29th March, 2007.

Heard Shri Dhore, learned counsel for the appellant.

This appeal is preferred against the judgment passed by the Ad-hoc District Judge-II, Achalpur on 5th October, 2006. The appellant is the original defendant. A suit was filed by the plaintiff for permanent injunction restraining the defendants from making any illegal construction on the suit site and also for a mandatory injunction to clean the well by removing the waste material and to remove the bathroom and the cement pillar constructed on the suit land. The plaintiff also sought the possession of the suit property.

It was pleaded by the defendants that the defendants had reconstructed the bathroom which was in dilapidated condition and had not put any waste material in the well.

The trial Court dismissed the suit of the plaintiff on an appreciation of evidence on record.

In an appeal filed by the plaintiff, the appellate Court reversed the findings recorded by the trial Court and

held that the plaintiff had proved that the defendant had constructed the bathroom and the cement pillar on the suit land illegally. It was held by the appellate Court that the defendant had not sought permission of the plaintiff or the local authority before making the construction of the bathroom or the cement pillar. The Court further held, on the appreciation of the evidence on record that the defendant had illegally filled up the well. The appellate Court, however, dismissed the case of the plaintiff so far as it related to the prayer for possession of the property.

On a perusal of the judgment passed by the appellate Court, it is clear that the appellate Court has rightly appreciated the evidence tendered by the parties on record to reach to the aforesaid finding. The appellate Court was justified in holding that the construction made by the defendant no.1 was illegal as the defendant had not sought the permission of the plaintiff landlord or of the local authority before making the same. The appellate Court was, therefore, justified in directing the defendant to remove the bathroom and the cement pillar.

Since the findings recorded by the appellate Court are pure findings of fact which do not give rise to a substantial question of law, the Second Appeal is dismissed with no order as to costs.

JUDGE

APTE